

## BEARING WITNESS

### The Human Rights Case Against Fracking and Climate Change

Script by Kathleen Dean Moore and Tom Kerns

Film produced by the Spring Creek Project, Oregon State University

*Note:* In an unusual melding of the paper-format and the video-format, we are sending the script for a 30-minute film that is now in production. We have embedded links in the manuscript, so that readers have access to some of the videos that will be sampled in the film. The film, which will be called “Bedrock Rights: A New Foundation for Global Action Against Fracking and Climate Change,” will be available on June 2. We send thanks to the Philosophers for Sustainability conference organizers for creatively re-imagining the Zoom-era gathering.

**Carly Lettero, Head, Spring Creek Project at Oregon State University:** We understand that climate change poses a grave and growing danger to the future. What we are now coming also to understand is that the climate crisis is the greatest threat to human *rights* the world has ever seen. Rights to life, health, and security of person are being violated – not just *will* be violated, but are *already* massively violated – all around the world. Governments, the very institutions charged with protecting their citizens’ rights, are not only failing spectacularly to meet that responsibility, but are deeply complicit in the violations. It’s hard to know where to turn.

So I was paying attention when my colleagues told me that they were calling for a special session of an international human-rights tribunal to hear a rights-based case against fracking and climate change. The Tribunal would bypass state and local authorities and appeal directly to universal standards of human decency.

The organization I head, the Spring Creek Project at Oregon State University, stepped in to help stage the Tribunal, bringing together the international panel of judges, the eyewitness testimony from people on the frontlines of fracking, and the arguments of human-rights attorneys and moral thought-leaders from around the world. In 2018, we live-streamed the Tribunal – a global first – with the intent to involve as many voices as possible, as equitably as possible. Rich and poor, near and remote.

After long deliberation, the Tribunal has issued its ruling. It reaches damning conclusions about the human-rights violations of oil and gas companies, undeterred, in fact enabled, by governments. The Tribunal’s ruling offers powerful, transformative, and desperately needed

new tools to help rein in governments and corporations that have so far been operating with few legal or moral constraints: First, the determination by a respected international court that fracking and climate change constitute massive violations of the Universal Declaration of Human Rights. And second, a rights-based narrative that reveals fracking and climate change as grave issues of environmental justice.

The human-rights story could start anywhere in the world, but let's start in the Bakken oil fields of North Dakota.

**Debra Marquart, poet, Iowa State University:** [[link to video](#); Bedrock Lecture, "Small Buried Things: A Poet's Response to Extraction"] Oil is dirty business. In the Bakken oilfields in my home state of North Dakota, spills, pipeline breaks and well blowouts are frequent. According to the New York Times, between 2006 and 2014, an estimated 18.4 gallons of oil and chemicals were spilled, leaked, or misted into the air, soil, and waters of North Dakota. Since 2014, a study of incidents reports that spills, large and small, continue to happen at a rate of one every 1.7 days.

If you drive through the Bakken, you will see flares coming out of the ground beside the pump jacks, emitting fumes that deliver payloads of CO<sub>2</sub> into the atmosphere, along with sulfur dioxide and other carcinogens.

**Jacqueline Patterson, Director of the NAACP Environmental and Climate Justice Program:** [[link to video](#); Bedrock Lecture, "Organizing Across Movements"] Communities of color and low-income communities are more likely to live near multiple sources of greenhouse gases and other pollutants.

They often call these pollution-burdened communities "sacrifice zones" because in the communities that are host to coal plants, . . . oil refineries, . . . and more. We sacrifice their health, their well-being, and often the very lives of residents so that the nation can waste 80% of the energy it generates.

**Debra Marquart:** [[link to video](#); Bedrock Lecture, "Small Buried Things"]

we knew we couldn't say we didn't know  
 except what's certain — benzene, toluene, ethylbenzene and xylene  
     volatile organic compounds  
     and diesel fuel (less than 1% per gallon) used in the bakken shale  
 plus, the radium inert in the rocks  
 brought back up in the fracking water  
 after it's made its long journey below to gather the oil  
 and brought topside to be separated out  
 then shipped to a wastewater center where it's treated cleaned  
 in condensate tanks, some of them lined, some unlined  
     seeping into the ground, toxins evaporating into the air  
 what's left over, uncleanable

trucked in water tankers to be disposed of   re-injected  
in the land previously known as away. . . .

beyond groundwater contamination  
now earthquakes in Colorado, Arkansas  
the swath of states between Alabama and Montana

a six-fold increase over twentieth century levels  
at least a dozen quakes last year in northern Ohio  
one measuring up to 4.8 on the Richter scale

speculation about the 30,000 disposal sites  
where fracking wastewater is deposited  
re-injected for final disposal  
into a deeper layer known  
as the basement rock

and speculation about fracking itself  
deep underground explosions to extract oil  
the water causing shifting plates, lubricating faults  
look for damage to homes  
look for reports of contaminated drinking water  
look for increases in breast cancer, miscarriages, birth defects  
we knew           we couldn't say we didn't know ground zero

**Sandra Steingraber**, biologist, author of *Living Downstream*: [[link to audio](#); Bedrock Lecture, "Fighting With Your Whole Heart: Human Rights and the New Science on Fracking"]

Emerging evidence revealing that fracking sites and associated fracking infrastructure are disproportionately sited in non-white, low income, and indigenous communities, both in the United States and in countries like Argentina, Mexico, and Canada where fracking has been exported means that it is right and necessary to understand the potential for human exposure and accompanying adverse impacts, not only as a matter of public health, but as a matter of human rights.

**Carly Lettero**: Now, it's not only activists calling out these human rights abuses. For the first time in history, an international human-rights court has ruled that fracking and climate change systemically violate human rights. The Rome-based Permanent Peoples' Tribunal Special Session on Human Rights, Fracking and Climate Change has established the link between environmental destruction and human-rights violations. Here are four of their central findings:

First. The Tribunal ruled that fracking and climate change create "serious" and "catastrophic" violations of human rights that are "inherent in the industry." Here are the words from the Advisory Opinion:

**Actor speaking for Judges:** [\[link to text of Advisory Opinion\]](#) “It is impossible for the [fracking system] to respect . . . rights of humans or nonhumans, including those of land and water as well as that of humans to health, life, free expression, or a clean environment.”

The rights violations of fracking and climate change are connected in a vicious circle: Heavy investment in fracking infrastructure militates against innovation in renewable energy; the slowing of renewables development leads to increased dependence on fracking, and so on.

**Carly Lettero:** So the Tribunal ruled that fracking should be banned worldwide. Second, the Tribunal addressed the inherent injustice of fracking practices.

**Judges:** “The system of [laws regulating fracking] is underpinned, accompanied, and permeated by racism and colonialism. The frontiers that make fracked gas cheap are constituted, in part, by frontiers of injustice dividing black and white, Indigenous and non-Indigenous, [rural] and privileged urban dweller.”

**Carly Lettero:** Fracking is economically feasible only because it legally de-values the life-ways and history of the people displaced by fracking. Thus fracking, in the court’s judgment, could not be made “nonracist” or “noncolonialist” without incurring costs that the industry is unable to tolerate.

Third. The Tribunal pointed to the industry’s strategies for overriding the rights and objections of people in front-line communities.

**Judges:** For fracking to exist, “strategies for cheating, undermining and expropriating affected communities . . . must be coordinated in a cost-effective way across large land areas. The technical requirements for mass ruthlessness across the fracking frontier create incentives for the development and maintenance of extensive institutions for control of thought and other action.

“The secrecy of operations is all that allows the deadly, large-scale experiments in poisoning humans and nonhumans that the fracking industry is currently conducting in violation of the Nuremburg Code.”

**Carly Lettero:** And fourth. Rather than protecting the rights of their citizens from rights violations, governments actively join with extractive corporations to permit serious violations.

**Judges:** Governments and extractive industries are joined in an “axis of betrayal,” the Tribunal wrote. “Such violations, committed by mega-corporations for the most part, are done either under what have become symbolic environmental laws that have been implemented to allow [practices] or . . . in violation of such laws but with impunity from the state.” Nation states have invariably been “bought off” by the extractivist industries in the name of ersatz “development.”

**Carly Lettero:** The Tribunal’s ruling is a global affirmation that when climate change, and the extraction techniques that fuel it, directly harm the rights of human beings to life, liberty, and

security of person, then deeply and broadly accepted moral norms have been violated, including those encoded in the Universal Declaration of Human Rights.

For more about what the Tribunal's opinion means, we turn to the co-editors of *Bearing Witness: The Human Rights Case Against Fracking and Climate Change*, a book based in the testimony and rulings of this Tribunal. They are Tom Kerns, co-drafter of the Declaration on Human Rights and Climate Change, and Kathleen Dean Moore, author of *Great Tide Rising: Toward Clarity and Moral Courage in a Time of Planetary Change*.

Will you tell us first about the Universal Declaration of Human Rights that the Tribunal cited in its opinion?

**Kathleen Dean Moore, Distinguished Philosophy Professor Emerita, Oregon State University:**

Seventy years ago, the world saw that when human-rights violations are legal under the laws of the states – as were the atrocities of Nazi Germany – there is a demonstrable need for some over-riding international law to call nations to account. So the nations of the world came together then to reach unanimous agreement about minimal standards of human decency. They encoded them in the Universal Declaration of Human Rights, for the first time in human history calling on states to protect universally held rights to life, liberty, and security of person. This is extraordinary – the closest the world has ever come to a global moral consensus about what is worthy of us as human beings. These are the moral standards that we can measure the actions of governments against.

**Carly Lettero:** Tom, you were part of the group that petitioned this international human-rights court to hold a special session that would measure fracking and climate change against these standards. How did you get them to take the case?

**Tom Kerns, Director of Environment and Human Rights Advisory and Professor Emeritus, Philosophy, North Seattle College:** The Permanent Peoples' Tribunal is definitely an interesting institution. It is politically and economically independent, which is exactly what you want in a human rights court. It was founded in 1979, about a decade after the international Vietnam War Crimes Tribunal that had been organized by philosophers Bertrand Russell and Jean-Paul Sartre. That Tribunal inspired the formation of the Permanent Peoples' Tribunal, an international human rights court based in Rome. In its more than forty years of existence, hearing forty-some human rights cases against governments, it has developed an impressive body of human rights jurisprudence that it can draw on, and its judgments are recognized and respected around the world.

Starting in early 2014 and for the rest of that year, Anna Grear and I – Anna is founder of the Global Network for the Study of Human Rights and the Environment – along with Damien Short, director of the Human Rights Consortium at the University of London, began petitioning the PPT to take on this case. The process took over a year and was finally approved in the spring of 2015.

**Carly Lettero:** But an international court has no power to compel action, right? So what difference does this ruling make?

**Tom Kerns:** You're right that a civil society court like the Permanent Peoples' Tribunal – just like the UN's International Court of Justice – does not have enforcement powers. And yet truth-telling really does matter. Giving voice to wrongs matters. Speaking for those who have no voice matters. And the function of a tribunal is to do just that. Gandhi called it Satyagraha, Truth-force, the power of truth-telling and truth-showing to move, awaken, and compel, so that, as Pope Francis says in *Laudato Si*, the world can hear “the cry of the earth and the cry of the poor.”

The Advisory Opinion makes clear that it is courts like these that help develop the critical moral standards referred to in the literature as “soft law,” and it is soft law that helps judges in national courts better understand, interpret, and apply the “harder” statutes of domestic law.

**Kathleen Dean Moore:** This Tribunal didn't mince words. Its work was to listen to the stories of the witnesses and then tell the truth that has been distorted and hidden for decades. Which truth? This one: It makes no sense “to allow an industry that is unnecessary, known not to be sustainable for the long term, and inherently abusive of human and natures' rights to continue operating. Especially is it irrational, and potentially catastrophic, when we consider its inevitable contribution to climate change and water scarcity at a time when there is an urgent necessity to adopt policies that will save the planet.” That's directly from the Advisory Opinion.

And so what has been considered normal corporate behavior over time is suddenly revealed as profoundly abnormal, irrational, and unjust. This dramatically undercuts the social license of the oil and gas industry to run rough-shod over peoples' rights – rights knowingly, systematically, and inexorably violated.

**Carly Lettero:** Let's single out a couple of rights and dive into the details here. What rights in particular do fracking and climate change violate, and how? We'll focus in on the right to health, the right to clean water, the rights of indigenous peoples, and the right to be informed and to participate. For each of these, we turn to legal reporting on the Tribunal, including direct quotes from the Advisory Opinion of the panel of judges, and to eyewitness accounts from the hearing.

HEALTH .....

**Student 1:** Article 25 of the Universal Declaration of Human Rights guarantees everyone the right to a standard of living adequate for the health and well-being of themselves and their families.

**Student 2:** Artículo 12. 1. Los Estados Partes en el presente Pacto reconocen el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental.

[English subtitles] States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. *International Covenant on Economic, Social and Cultural Rights, Article 12*

**Judges:** In addition, the right to health underpins the rights to life, liberty, and security of person guaranteed in the Universal Declaration of Human Rights. But the judges found that violations of the right to health are not only widespread, but inherent in the nature of climate change and the practice of fracking itself.

**Primilla Malik:** [\[link to video\]](#); eyewitness testimony] “My name is Primilla Malik. I am the chair of Protect Orange County, and a resident of Minisink, New York, a once pristine rural residential community in upstate New York. And it's also home to many 9/11 first responders who moved here for clean air. In 2012, the Federal Energy Regulatory Commission (FERC) approved a 12,260-horsepower gas compressor station to be built just a few hundred feet from many, many homes, dozens of homes. FERC never rejects projects, so it was approved despite evidence of imminent human and environmental harm. Since it’s become operational, we've had frequent odor events after which children in our community experience nosebleeds, breathing problems, headaches, abdominal cramps, and rashes. Adults report breathing problems. I get breathing problems, and I have no history of respiratory illness before this was built. People also report difficulty concentrating and losing balance. Many families have left. One walked away from their home entirely and left the state.”

**Judges:** In its Advisory Opinion, the Tribunal ruled that “any proposed industrial operations, especially those that will be sited and conducted near private properties, family homes, or neighborhoods . . . should be required to undergo independent Health Impact Assessments.” Failure to anticipate and consider health impacts, they implied, “constitutes a failure of governments’ human rights obligations and a direct threat to people’s right to health.”

CLEAN WATER .....

**Student 3:** The General Assembly . . . recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights. *UN Resolution 64/292.*

**Judges:** The Tribunal writes that the “right to clean water . . . is essential for the full enjoyment of life and all human rights.”

They go on to say that, “through its explosive disruption of subsurface geological layers, fracking unavoidably spreads heavy metals and radioactive substances into water sources and other locations.” The contamination of water cannot be measured and it cannot be reversed. Surface spills and backflow of hydraulic fracturing fluids and problems with lining and slurry

seals, which allow the migration of gas to freshwater aquifers, represent the greatest threats to water resources, although not the only ones.

They wrote, “of the 240 chemicals used or created during the fracking process whose biological effects on humans have been studied, 157, or 65 percent are reproductive or developmental toxins. . . . Another 781 chemicals used in fracking lack toxicity data altogether.”

**Carly Lettero:** Simona Perry, a social scientist and human rights advocate, has had the privilege of sitting at kitchen tables and in local restaurants with rural people in the fracking fields, listening to their hopes and fears.

**Simona Perry:** Over the course of the past eight years, water coming from private drinking water wells in Bradford County, Pennsylvania, has turned from clear and clean with little to no total dissolved solids to white, black, purple, rusty orange, fizzing and gelling and in a few cases, the water has disappeared entirely. These changes are sometimes accompanied by a strange smell that one farmer aptly described as death.

**Carly Lettero:** This leads Sandra Steingraber to point out that no technology exists to turn fracking waste back into drinkable water. She asks a question worth considering: What does it mean, practically and morally, for humans to make fresh water disappear?

**Sandra Steingraber:** We’ve never done that before – to actually remove water from the hydrological cycle, ground water that is the mother of rivers that flow to the sea, that evaporate into clouds, that fall as rain or snow and rise again as sap or nectar, mist, and fog. We’ve never done that before.

## INDIGENOUS RIGHTS .....

**Student 4:** Los pueblos indígenas tienen derecho a la conservación y protección del medio ambiente y de la capacidad productiva de sus tierras o territorios y recursos.

[English subtitles] Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories. *United Nations Declaration on the Rights of Indigenous Peoples Article 29*

**Student 5:** Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. *United Nations Declaration on the Rights of Indigenous Peoples, Article 32 (section one)*

**Judges:** If climate change threatens or undermines Indigenous peoples’ ability to protect and live on traditional lands, to rely on traditional means of subsistence and travel, and to continue cultural practices related to their land, then their “right to the conservation and protection of the environment and of their lands or territories” has been abrogated and states have failed to meet their human rights obligations.

**Winona LaDuke, Executive Director, Honor the Earth:** [\[link to video\]](#); Bedrock Lecture, “The Next Energy Economy”] My name is Winona LaDuke. I’m from the White Earth Reservation in northern Minnesota.

I want to start with gratitude. The Creator gave us this really beautiful world to live in. And the Creator gave my people this beautiful place to live and to protect. . . .

We should always try to be mindful that the decisions we make in our community today are going to be decisions that are going to affect generations ahead. . . .

In each deliberation, we should consider the impact upon the seventh generation from now. That’s what we’re trying to do.

**Robin Bronen, Executive Director, Alaska Institute for Justice:** [\[link to video\]](#); Bedrock Lecture, “A Rights-based Approach to Climate-Forced Relocation”] The displacement of people caused by climate change is going to be the greatest human rights challenge of our time and the Indigenous peoples of Alaska are some of the first peoples in the world who are facing the excruciating choice of figuring out where they will be able to go because they are no longer -- many of the communities along the coasts of Alaska are no longer able to stay where they have lived for millennia because it is no longer safe. . . .

And the ways that human rights are impacted are – include everything from the right to life, to the right to be able to practice cultural traditions and the right to subsistence. . .

... this past winter season between October of 2017 and February of 2018 there were 42 storms that impacted these communities and, again, without the arctic sea ice they experienced tremendous flooding and erosion which is causing the land on which they live to permanently disappear.

**Judges:** An Indigenous representative from a prior Permanent Peoples’ Tribunal session spoke to the judges about the necessity of the land to their cultural survival.

**Luhui Whitebear, enrolled member of the Coastal Band of the Chumash Nation and Assistant Director of the Oregon State University Native American Longhouse Eena Hawsr, reading from the Advisory Opinion:** “The land, which was given to us from the beginning, is what sustains our coexistence . . . as native Indigenous peoples. In that territory there are the norms that we must fulfill as representatives of a specific culture. Each and every one of the places of our history are components of what we call ancestral territory, a sacred space that nourishes, strengthens, and gives us existence on this planet.”

RIGHTS TO INFORMATION AND PARTICIPATION .....

**Student 6:** Each party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters. *Aarhus Convention, Article 1*

**Student 7:** Any person whose rights or freedoms . . . are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. *International Covenant on Civil and Political Rights, Article 2(3)a*

**Carly Lettero:** The Advisory Opinion of the Tribunal singled out the rights to information and to participation for special mention. These cut to the heart of the matter – this is about power, this is about who has a voice, this is about powerful corporations bullying and ignoring the people and land that they are destroying. Silencing people, denying them any information, arresting them when they protest – these tactics undermine every right to self-determination.

**Judges:** The Tribunal affirmed that governments have a human-rights obligation to provide a safe and enabling environment in which individuals and groups can operate free from threats, harassment, intimidation and violence, can enjoy freedom of expression, association and peaceful assembly in relation to environmental matters, and can have effective, timely access to environmental information.

However, they said, “possibly the most consistent finding of all the presentations of cases . . . has been the generalized, planned exclusion of the human communities involved from any information and adequate discussion on the planned and ongoing fracking activities.” This is an unacceptable “violation of the right to informed participation.”

For example, they said,

The fracking industry systematically uses the law to “suppress information about potential or actual ecosystem effects. Gag orders, non-disclosure agreements and strategic lawsuits against public participation are . . . routine across the fracking frontier.” Less formal means of biasing or preventing the public discussion include “physical intimidation, informal censorship of information presented by fracking critics, false advertising, deliberate failure to investigate complaints, . . . the subversion, manipulation and marginalization of those procedures for public participation in decision-making that are still required by law. . . and entrenched patterns of intellectual bullying.”

“Resistance and open protest generate new waves of [rights] violations, this time of civil and political rights: . . . to liberty and security, to a fair trial, to freedom of expression and assembly, and association.”

**Teresa Mills, Author at Center for Health, Environment and Justice:** I hear their stories; I cry with them because their rights have been violated; they are denied access to information, they have to go through armed guards with dogs to go to a public meeting. This is America, that is a human rights violation. . . .

**Carly Lettero:** The Tribunal, the legal experts, and the courageous eyewitnesses have given us a clear vision of the collusion of governments and fossil fuel companies that increases the greenhouse gas emissions that fuel climate change, in what threatens to be the greatest

violation of human rights the world has ever seen. They also taught us the value of bringing a human-rights lens to truly see the actions of government collusion with extreme energy extraction. . .

Let us return to Dr. Kerns and Dr. Moore. What did you learn by writing this book, *Bearing Witness*?

**Tom Kerns:** One thing I learned, or rather re-learned, is the global importance and the personal empowerment of truth-telling. A Tribunal has this crucially important function: to listen to and give heed to the truth-telling of personal witnesses. People were crying in the corridors after some of the pre-tribunals held in front-line communities, because this was the first time anyone had actually listened to their stories of the real damage fracking was visiting on them. When ordinary people come forward and say their truth, say what they see with their own eyes, describe what they and their families have been living through, then the industry untruths become abundantly evident.

**Kathleen Dean Moore:** This is about the power of bearing witness. What is the reality on the ground? A truly public, truly unbiased hearing is a good way to find out. Anna Grear, one of the legal experts who testified, called this “decolonizing the imagination,” and “unshackling the imagination,” escaping from the blinders imposed by a dominant culture, and seeing things as they are. This has the potential to create change from the people, from the conscience of the streets, from what Anna called the “restless politics of the possible.”

**Tom Kerns:** Yes, a non-governmental civil society court like this may not be able to directly *compel* changes in behavior, but it can change how we think. A human rights court can change what people understand to be acceptable behavior. It can help people see that wrecking the world is not normal, that dismantling the sources of our sustenance is just plain crazy, and that dishonoring whole classes of people, present and future, is an unacceptable result of colonialism and racism.

**Kathleen Dean Moore:** Boston University scholar Ibram X. Kendi draws the connections this way. I’m paraphrasing: It is not possible to frack without wrecking the land. It is not possible to wreck the land without destroying the livelihoods and homes of people. It is not possible to destroy peoples’ livelihoods and homes without devaluing their way of life. It is not possible to devalue entire ways of life without devaluing also the people. And that, he points out, is racism.

And so the Tribunal drew the connection between social justice and environmental justice, each a necessary condition for the other. The Tribunal wrote, “Today there is a silent war by the industry, with its political, financial, and media allies, against the ecosystem. The assault is directed at Mother Earth while people are the indirect ‘collateral damage.’” Understanding that we are all in this together – humans and cypress trees, coral reefs and fisherfolk – reinforces the critical alliance between activists for social justice and activists for ecological thriving.

**Tom Kerns:** We have come to a fuller, and very disturbing, understanding of the deep, double wrongs that governments are inflicting. Governments are first failing to protect our rights, and second, when our rights are vulnerable and crumbling, they take an active part in their violation. Philosopher Arthur Schopenhauer calls double-wrongs of this sort, “treachery.”

**Kathleen Dean Moore:** And so we learn ultimately, that although the climate crisis is a technological problem, a national security problem, an economic problem, it is primarily a moral challenge. It calls us to summon the moral power of justice, the shared standards of human decency, and a vision of a future that protects the dignity and dreams of all. Equitably. Humans and nature. North and south. Present and future. Our action will decide what will become of the people and the sacred places . . .

**Debra Marquart:** [[link to video](#); Bedrock Lecture, “Small Buried Things”]

What will become of your sacred places,  
What will become of the prairie dog,  
The wolf, the wild horses, the eagle,  
The meadowlark, the fox, the elk,  
The pronghorn antelope, the rare mountain lion,  
The roads, the air, the topsoil,  
Your people your people,  
what will become of the water?